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Bulletin 2002-08

RENEWAL OF INDIVIDUAL BROKER LICENSES, CONTINUING EDUCATION REQUIREMENTS FOR AGENTS AND BROKERS, LICENSING OF CORPORATIONS AND LICENSING OF SURPLUS LINES BROKERS

TO: **Licensees, Insurers and Interested Parties**

FROM: **Linda Ruthardt, Commissioner of Insurance**

DATE: **March 7, 2002**

RE: **Renewal of Individual Broker Licenses**
Continuing Education Requirements for Agents and Brokers
Corporate Licensing Requirements
Dissolution of Corporations
Deceased Spouse Provision
Surplus Lines Brokers – Requirements for Licensure

The purpose of this bulletin is to provide new and updated information regarding licenses and related matters relative to Massachusetts General Laws, Chapter 175, § 163, § 166, § 166A, § 168, § 174, § 174D, § 177E and the Massachusetts Regulations, 211 C.M.R 50.00, 50.04, 50.05

Renewal of Individual Broker Licenses

Individual broker licenses must be renewed every **three years**. The responsibility to timely renew lies solely with the licensed broker. For your convenience, the Division of Insurance (the "Division") currently sends renewal applications to each broker 60 days prior to the expiration of the license. The issue and expiration dates will continue to be printed on the licenses. Brokers have an additional 30 days from the expiration date to renew their licenses. Failure to renew within the 30-day post expiration date will result in the license being cancelled, whether or when the renewal application was received.

Any attempt to subsequently renew the expired license will require the broker to re-take the licensing exam. Exam waivers will only be granted to those individuals who also hold an

active agent appointment. Furthermore, any current continuing education status will be forfeited due to failure to timely renew the license. To clarify this point, the new application date will be considered the "original issue of license" date for the purposes of §177 E. Additionally, anyone previously exempted ("grandfathered") from continuing education will lose that status. Please be advised, there will be no waivers for loss of grandfathering status. This means that individuals licensed prior to April 4, 1983 (the grandfathering date) who lose that status because of the failure to renew their licenses in a timely manner will now have to comply with continuing education requirements. Please directly consult Chapter 175 § 177E and 211 CMR 50.00 for the specific continuing education course requirements.

Continuing Education Requirements for Agents and Brokers

Pursuant to M.G.L. c. 175, § 177E, licensees are required to complete a minimum of sixty (60) hours of instruction during the first thirty-six month period following the date of original issue of licensure and forty-five (45) hours every thirty-six month period thereafter. The Division has become aware that some licensees do not take continuing education courses and allow their licenses to lapse. They then retake the license examination, and apply for a new license. Anyone who continues to engage in this practice must understand that they do so at their own risk. Should they not succeed in passing the required examination, and/or not be able to take the examination on a timely basis for any reason, they cannot expect any extension of any license, which was put at risk by their not taking the continuing education courses as the Legislature intended. They will also not be exempt from audit by the Division. See "Certification of Continuing Education Compliance", below.

Certification of Continuing Education Compliance

211 CMR 50.06 currently requires agents and brokers to complete a form prescribed by the Commissioner to certify completion of the continuing education requirements found in 211 CMR 50.05. Brokers with their renewal application submit completed forms to the Division. Agents submit their completed forms to their appointing insurers who then attest to the Division concerning the agent's compliance with 211 CMR 50.05 at the time of renewal of the agent's appointment with the insurer. In the case of agents, those with multiple appointments generate multiple forms/attestations, which are then submitted to the Division.

Since the agents and brokers must complete the certification form in the first instance, the Division has determined that a more efficient and auditable process to be effective July 1, 2002, would be for both agents and brokers to retain the certification forms and not submit them to the Division or, in the case of agents, to their insurers, (unless the insurer requests such information as a part of its contractual arrangements with its producers). In turn, insurers will not be required to file attestations with the Division upon renewal of their agent's appointment.

The Division will audit agents and brokers from time to time to confirm their compliance with the continuing education requirements. Each licensed resident agent or broker shall be responsible for the completion and maintenance of the continuing education forms which certify that said person has met the continuing education requirements of 211 CMR 50.05. The Continuing Education Provider shall sign each form as to the participant's satisfactory

completion of the approved course. When chosen for audit, the licensee must submit proof of compliance with continuing education requirements. Failure to produce such proof will result in suspension of all licenses and may result in additional fines or penalties.

"Grandfathering" Provision

All individuals licensed prior to April 4, 1983 are exempted by statute, commonly referred to as "grandfathered", from the requirements of continuing education. In order to maintain this status, however, such individuals must be continuously licensed. If an individual allows his or her license(s) to lapse and later re-applies, the exemption will not be available and continuing education requirements will apply. Furthermore, please be reminded that individuals licensed prior to April 13, 1983 who subsequently amend their licenses by adding an additional line or lines of authority are then subject to the continuing education requirements. See 211 CMR 50.04(b).

Licensing of Corporations

Pursuant to M.G.L. c. 175, § 174, officers and/or directors specified on a corporate license may act there under in the name and on behalf of the licensed corporation. Such individuals must be so licensed as individuals (the majority of whom must have been licensed for three years). In interpreting § 174, the Division has consistently mandated that in order for a corporate license to be issued for particular lines of insurance, all officers and directors named on said license must also be properly licensed to sell those lines. However, in recognition of the evolving insurance marketplace, the Division has re-considered this long-standing policy.

Effective immediately the Division will require that for each line of insurance applied for, there must be at least one officer or director named on the license who holds a license to sell and to solicit that line. **It is no longer required that each individual named on the license be licensed to sell all the same lines for which the corporation is licensed**. Of course, an individual cannot sell or solicit a line of insurance unless individually licensed to do so (with the limited exception set forth in the third paragraph of c. 175, § 162, but officers and directors will no longer all need to maintain licenses for lines which they do not personally sell.).

The Division is aware that from time to time neither the individuals nor the Division was careful to assure that individuals named on a corporate license continued to maintain their individual licenses. **Starting July 1, 2002, the Division will no longer be inconsistent in enforcing the statutory requirement that all individuals named on a corporate license maintain their individual licenses and comply with the appropriate continuing education requirements.** In preparation for this, the Division will issue replacement individual licenses for those who allowed their licenses to lapse. In this respect, please note that the Division does not consider the replacement individual license to be the original date of licensure for the purposes of the continuing education law. Rather, the date of original issue of license will be considered to be the date on which the individual was first licensed. If you are one of the affected individuals and do not receive a replacement individual license before July 1, 2002, please write to the Director of Agents and Brokers Licensing, Diane Silverman-Black.

Inclusion of the word "Insurance" in any corporate name

Pursuant to c. 155, § 9, the name of any corporate agent, producer, or adjuster of fire losses is subject to prior written approval of the Commissioner. The proposed name of the corporation must be businesslike and may not be the same as, or so similar to another corporation so as to be mistaken for it. Furthermore, it is the Division's practice to require that the name include the word "insurance".

Articles of Dissolution

Pursuant to c. 175, § 174, corporations must notify the Commissioner in writing in the case of the dissolution of the corporation. Upon receipt of such notice, the commissioner shall forthwith revoke its license without a hearing. Whoever, being clerk or corresponding officer of a corporation under this section, fails to file with the commissioner duly certified copies of all amendments to the articles of organization of such corporation as provided herein, or fails to notify the commissioner of the dissolution of the corporation, or whoever, being specified in the license of such corporation as an officer or director, acts under said license after the dissolution of such corporation, shall be subject to fines.

Deceased Spouse Provision

Pursuant to M.G.L. c. 175, § 174D, the surviving spouse of a deceased licensed insurance agent or broker may continue the business that was conducted by the deceased spouse at the time of his/her death; provided, that such **business is conducted under the supervision of a duly licensed agent or broker**. The surviving spouse must provide the Division with a copy of the death certificate and must inform the Division of the name of the properly licensed individual who will be supervising the insurance business. The supervising licensee must be duly licensed to sell the lines of insurance offered by the deceased's agency and must be on the premises during business hours. Please be advised that failure to maintain a properly licensed individual on-site will result in appropriate disciplinary action.

In cases where the removal of the deceased from the agency's license will result in non-compliance with the licensing provisions of c. 175, § 174, (i.e. if the majority of officers and directors named on the license will not have been individually licensed for at least three (3) years and/or the lines of authority of the officers and directors named on the license no longer comprise the proper lines of insurance), the agency must amend its license immediately in order to remedy the situation.

Surplus Lines Brokers – Requirements for Licensure

The Commissioner may issue a license to act as a surplus lines broker (aka "special broker") to a "suitable person" who is otherwise qualified pursuant to c. 175 § 168. The Division would like to clarify that one of the conditions to being considered "suitable" for licensure as a surplus lines broker is an individual agent, broker, or advisor license for the line/lines to brokered; e.g., property/casualty; life, health.